

### REMARKS

Claims 1, 6-11, and 22-25 are pending in the Application. Claims 2-5 and 12-21 have been cancelled. Claim 1 is independent.

#### *Claim Rejections - 35 USC § 103*

The Patent Office rejected Claims 1, 6-11, and 22-25 under 35 U.S.C. § 103(a) as being unpatentable over Maxtor (“Serial Attached SCSI Architecture: Part 4 - the Transport Layer, October 2003 - 6 page”) (“Maxtor”) and Nemazie (U.S. Publication No. 2004/0252716) (“Nemazie”).

Applicant respectfully traverses the rejection. Under 103(a), the standard for determining what prior art is allowable for an obviousness rejection is whether “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made.” Emphasis added. For initial examination purposes, the date of invention is considered to be the filing date of the application. *Bates v. Coe*, 98 U.S. 31, 34 (1878). The prior art must also be “described in a printed publication...before the invention thereof by the applicant for patent.” (emphasis added) 35 U.S.C. § 102(a).

Applicant respectfully submits Maxtor is not available as a prior art reference for an obviousness rejection. The filing date of this application is July 28, 2003. The publication date of Maxtor is provided as October 2003, more than 60 days after the filing date of the application. Therefore, Maxtor is not appropriate prior art for rejection of claims 1 and 11 and a *prima facie* case of obviousness has not been established for these claims. Claims 6-11, and 22-25 depend from Claim 1 and are believed allowable due to their dependence upon an allowable base claim. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. (emphasis added) *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

**CONCLUSION**

In light of the forgoing, reconsideration and allowance of the claims is earnestly solicited.

Respectfully submitted,  
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By: \_\_\_\_\_



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